

SERVED: November 13, 1992

NTSB Order No. EA-3735

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of November, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12781
v.)	
)	
ROGER ALLAN ERICKSON,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent, pro se, has appealed from the oral initial decision Administrative Law Judge Jimmy N. Coffman rendered in this proceeding on October 13, 1992, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed in its entirety an emergency order of the Administrator revoking

¹An excerpt from the hearing transcript containing the initial decision is attached.

respondent's private pilot certificate for his alleged violations of sections 61.3(c), 61.51(a), 61.56(b), 91.7, 91.13(a), 91.407(a), 91.409(a) of the Federal Aviation Regulations, "FAR," 14 CFR Parts 61 and 91.² As we find, for the reasons discussed

²The cited regulations provide as follows:

"§61.3 Requirement for certificates, rating, and authorizations.
 * * * * *

(c) Medical certificate. Except for free balloon pilots piloting balloons and glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter....

§61.51 Pilot Logbooks.

(a) The aeronautical training and experience used to meet the requirements for a certificate or rating, or the recent flight experience requirements of this part must be shown by a reliable record. The logging of other time is not required.

§61.56 Flight review.
 * * * * *

(b) No person may act as pilot-in-command of an aircraft, within the period specified in paragraph (c) or (d) of this section, as applicable, unless that person has--

(1) Accomplished a flight review given in an aircraft for which that pilot is rated by an appropriately rated instructor certificated under this part or other person designated by the Administrator; and

(2) A logbook endorsed by the person who gave the review certifying that the pilot has satisfactorily accomplished the flight review.

§91.7 Civil aircraft airworthiness.

(a) No person may operate an aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur.

§91.13 Careless or reckless operation.

below, that the respondent has identified no valid basis for reversing the law judge's decision, the appeal will be denied.³

The September 3, 1992 Emergency Order of Revocation, as amended at the hearing where it served as the complaint, alleged, among other things, the following facts and circumstances concerning the respondent:

1. You are now and at all times relevant hereto you held Private Pilot Certificate number 195853.
 2. At all times relevant hereto you were the owner and operator of a Cessna 172, registered as N2594L.
 3. At all times relevant hereto, and after March 13, 1992, N2594L was equipped with a Chevrolet V8
- (..continued)

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

§91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.

(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless--

- (1) It has been approved for return to service by a person authorized under §43.7 of this chapter; and
- (2) The maintenance record entry required by §43.9 or §43.11, as applicable, of this chapter has been made.

§91.409 Inspections.

(a) Except as provided in paragraph (c) of this section, no person may operate an aircraft unless, within the previous 12 calendar months, it has had--

- (1) An annual inspection in accordance with part 43 of this chapter and has been approved for return to service by a person authorized by §43.7 of this chapter; or
- (2) An inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter...."

³The Administrator has filed a reply opposing the appeal.

automobile engine, rather than an engine that complied with the Cessna 172 Type Certificate.

4. You did not apply for, nor was an experimental aircraft certificate issued for N2594L until July 14, 1992.
5. At no time relevant hereto did you hold a medical certificate valid for any class.
6. On March 13, 1992, you acted as pilot in command of N2594L on a passenger-carrying flight in the vicinity of Fairmont, Minnesota.
7. In May, 1992, you acted as pilot in command of N2594L on a flight in the vicinity of Fairmont, Minnesota.
8. On June 24, 1992, you acted as pilot in command of N2594L on a flight in the vicinity of Fairmont, Minnesota.
9. On June 30, 1992, you acted as pilot in command of N2594L on a flight in the vicinity of Fairmont, Minnesota.
10. N2594L had not had an annual inspection in over 2 years at the time of the flights described above.
11. You had not had a flight review as required by 14 CFR 61.56 in over 2 years at the time of the flights described above.
12. You have kept no reliable record of recent flight experience and were therefore unable to demonstrate that you had the recent flight experience necessary for the flight described in paragraph 6 above.
13. At the time of the flights described above, N2594L was not approved for return to service, by a person authorized under 14 CFR 43.7, after it was altered, by removal of its original engine and installation of the V8 engine described above. Further, the maintenance entry required for this alteration under 14 CFR 43.9 was not made.

The Administrator introduced evidence in support of all contested

allegations.

The respondent does not on appeal argue that the charges sustained by the law judge are not adequately supported by the record.⁴ Rather, he simply appears to object to the fact that the law judge found the Administrator's evidence more persuasive in several respects than the respondent's evidence.⁵ However, inasmuch as the law judge made a clear credibility choice in favor of the Administrator's witnesses where the evidence the parties adduced was contradictory, respondent's belief that the law judge should have credited his testimony and that of his witnesses on some matters in contention provides no ground for overturning the initial decision. Credibility determinations lie within the exclusive province of our law judges to make because they have the opportunity to assess the demeanor of the various witnesses as they testify. Absent some showing, not attempted here, that the law judge's findings in this connection should be

⁴Respondent does suggest that there is no showing that he actually flew his aircraft, either before or after the engine conversion, in a careless or reckless manner. Since, however, respondent, who did not hold a medical certificate and had not had a recent biennial flight review, operated an aircraft of undetermined airworthiness both before and after it had had an unapproved major alteration, his conduct created at least a potential endangerment to the lives or property of others under section 91.13(a) and, therefore, no actual evidence of unsafe operation was required for the derivative or residual violation alleged.

⁵Our examination of the hearing transcript revealed, contrary to respondent's suggestion on appeal, no instance in which he was prevented from introducing evidence he believed was necessary to his defense. Nor, for that matter, did we observe any comment by counsel for the Administrator during closing argument that an example had to be made of "rural pilots," as respondent also claims in his two-page brief.

rejected as inherently incredible or clearly erroneous, they will not be disturbed.

Last, we perceive no merit in respondent's suggestion that revocation is not an appropriate sanction for the violations charged and proved. Without regard to what the respondent may have mistakenly believed concerning the necessity for him to have a medical certificate or for the aircraft to have had an annual inspection or experimental airworthiness certificate prior to June 26, 1992, he was at that time unequivocally advised by an FAA inspector that he could not lawfully operate the aircraft unless those requirements were met. Consequently, the June 30th operation reflected a deliberate defiance of the inspector's advice and the pertinent regulations themselves. By his conduct on that date alone respondent demonstrated that he "cannot be trusted to conform his behavior to the requirements of the FARs" (Administrator v. McKinley, NTSB Order EA-3275 at 4 (1991)). Such an individual lacks qualification to hold an airman certificate.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and
2. The emergency order of revocation and the initial decision are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.